exh 'MON-2'. As a result of what I was informed the defendant, in its issues of *Asiaweek* of 18 June 1989 and 16 July 1989, published articles putting the events of the first week June 1989 in perspective. Ta Kung Pao published an apology in its edition 26 June 1989. As a result of such apology the defendant similarly published an apology in its edition of *Asiaweek* 16 July 1989. There are now produced and shown to me marked 'MON-4', 'MON-5' and 'MON-6' copies of the three editions of *Asiaweek* to which I have referred. There is now produced and shown to me marked 'MON-7' a copy of an extract from Ta Kung Pao 26 June 1989. Similarly, certified translations of these exhibits will be produced to the honourable court at a later date.

5 By reason of the facts herein before appearing I say that the matter of which complaint is made was published innocently. I refer to the letters of the defendant's solicitors herein 12 July and 15 July 1989 respectively, copies of which are now produced and shown to me marked 'MON-8' and 'MON-9' containing an offer of amends within the meaning of s 7 of the Defamation Act (Cap 75).

From this affidavit, it seems to me that the defendant in relation to the publication of the offending article was relying heavily on 'Ta Kung Pao', and after the defamatory article was brought to its attention it merely followed the footsteps of 'Ta Kung Pao'. The affidavit said that the defendant published in its issues of *Asiaweek* of 18 June 1989 and 16 July 1989 articles 'putting the events of the first week June 1989 in perspective' — between the two articles there was an inexplicable lapse of nearly one month. 'Ta Kung Pao' published an apology in its edition of 26 June 1989, and 'as a result of such apology' the defendant 'similarly published an apology in its edition of *Asiaweek* of 16 July 1989' — again there was an inexplicable lapse of some 20 days. Since it appeared to follow 'Ta Kung Pao' on the matter of apology it is curious why it could not have published its apology immediately after 26 June 1989, and why it could not have made its offer of amends soon thereafter, for instance, by 1 July 1989. The various publications referred to in para 4 of Michael O'Neill's affidavit were in Chinese, and up to the date of hearing of the appeal before me no English translation of any of them had been furnished. I can therefore make no observation on what they published.

On a close examination of these material events as borne out indisputably by the documents before me, I have unhesitatingly come to the conclusion that the defendant did not make the offer of amends 'as soon as practicable' after it had received notice that the article it published was defamatory of the plaintiff. The defendant first took a combative stand — in my view, quite unnecessarily — in the defence of its article. Assuming that it was entitled at the first blush to take the stand as it did, the subsequent events unmistakably showed that it was indefensibly lackadaisical in its efforts of making the offer of amends in the circumstances. There is, in my opinion, no reason why it could not have made the offer of amends by 18 July 1989, by which date it must have investigated the matter fully and taken the necessary legal advice.

Lastly, the purported offer of amends has also not complied with the provisions of s 7(3)(b) of the Act. The defendant must have distributed copies of the issue of *Yazhou Zhoukan* of 18 June 1989. That being so, the offer of amends in conformity to s 7(3)(b) must contain an offer to take such steps as reasonably practicable on the part of the defendant to notify persons to whom copies had been distributed that the words were alleged to be defamatory of the plaintiff. That, however, the defendant had failed to do. Plainly, the defendant has not complied with the several requirements under s 7 of the Act; in consequence, there was no offer of amends made under s 7 of the Act, and even if there was, it was not made within the time frame prescribed in that section. The statutory defence averred in para 5 of the defence therefore cannot succeed, now or at a trial.

In the result, I have inexorably come to the conclusion that the defence filed is incontestably a sham, a hopeless and vexatious defence, and as such constitutes an abuse of the process of the court. No amendment of any kind can in any way improve it.

Appeal dismissed.

Solicitors: *Rajah & Tann; Tan Rajah & Cheah.*

Reported by *Azra Moiz*

City Developments Ltd v Commissioner of Stamp Duties

HIGH COURT (SINGAPORE) — ORIGINATING MOTION NO 79 OF 1988
CHAN SEK KEONG J
25 JANUARY 1991

Revenue Law — Stamp duty — Valuation of property — Basis of valuation — Method of valuation

City Developments ('CD') were dissatisfied with the assessment of stamp duty chargeable in respect of a conveyance on 24 March 1982 of vacant land to them by Garden Estates ('GE'). The Commissioner of Stamp Duty ('the Commissioner') had assessed the value of the property as $15,485,000 in reliance upon the valuation of the Chief Assessor. CD valued the property at $7,084,000 based on two valuations in 1982 and 1985. On this basis, the stamp duty chargeable would be $155,447. The valuation was done on a 'willing seller-prudent buyer' basis.

In 1987 CD obtained a supplementary valuation report. It purported to review the earlier valuation and to provide additional evidence to support it and to comment on the Chief Valuer's report.

The valuations relied on by CD took the development cost and sales revenue of the property up to 1987 to show that on the basis of the Chief Assessor's valuation, they would have suffered a loss. Alternatively they used three hypothetical rates

of conversion between commercial and residential units, and then compared them with recent URA sales of residential properties. They also compared the valuation with four recent sales of plots with buildings. They imputed values to the buildings.

The Chief Valuer based his valuation on three comparable properties which were zoned for local shopping. He valued two components, the commercial component in terms of its plot ratio, and the residential component in terms of its density. As the permitted percentages of permitted residential use, densities and plot ratios differed in respect of various properties, the figures were adjusted to obtain a net overall plot ratio and net overall density. On the basis of this, the Chief Valuer imputed a value to the residential component to each comparable from recent sales in the vicinity. From this the commercial component was derived. This was used to value the property. The stamp duty chargeable would be $464,150.

Held, reducing the stamp duty chargeable:

(1) The proper basis to value property was 'willing seller and willing buyer', not 'willing seller-prudent buyer'. Both valuations by GE were of no assistance in determining the market value of the property.

(2) The supplementary report is defective as it purports to change the basis of the valuation. It is also suspect in that it appears to be prepared to rationalize the first valuation.

(3) CD's valuation was rejected as there was no way to show the correctness of any of the rates of conversion. The alternate method was not acceptable for a number of reasons, including that the imputed values were arbitrary and the properties selected were not comparable.

(4) The Chief Valuer's method was preferable as it required less adjustments.

(5) The imputed values used by the Chief Valuer were too high. However on adjustment, they could be used to arrive at the market price.

[*Editorial Note*: The appellants have appealed to the Court of Appeal vide Civil Appeal No 33 of 1991.]

George Pereira for the appellants.
S Sharma for the respondent.

Cur Adv Vult

Chan Sek Keong J: This is a case stated by the Commissioner of Stamp Duties, the respondent, under s 40 of the Stamp Duties Act (Cap 312, 1985 Ed) ('the Act') upon the requirement of the appellants who were dissatisfied with the assessment of the respondent of stamp duty chargeable in respect of a conveyance dated 24 March 1982 whereby the vacant land comprised in Lot 70 TS 5 ('the property'), with an area of 3,871.2 sq m (41,670 sq ft), was conveyed to the appellants by Garden Estates (Pte) Ltd ('GE') at the price of $5,194,875.

The respondent had assessed the value of the property as $15,485,000 ($371.61 psf) in reliance upon the valuation of the Chief Assessor. The stamp duty that was chargeable was accordingly increased from $155,447 to $464,150.

The property was sold by GE to the appellants under an agreement for sale dated 25 November 1981, with planning approval obtained on 9 July 1981 to build a 13-storey shopping/residential building (a five-storey podium of which three floors are to be used as car parks and an eight-storey tower block) with a basement floor. GE and the appellants had common shareholders and as the property was not sold by auction or public tender, the agreed price was not necessarily the market value of the property. Prior to 25 November 1981, GE had obtained a valuation dated 29 October 1981 from CKS Auctioneers & Valuers (Pte) Ltd ('CKS'). The valuation was $7,084,000, on 'a willing seller-prudent buyer' basis. No objective evidence of value was provided for this valuation. As CKS themselves said in the valuation, 'There are no recent comparable property transactions ... This valuation is based largely on our experience and knowledge of the property market.'

For the purpose of this appeal, the appellants accept that the market value of the property was $7,084,000 ($170 psf) and not $5,194,875. They rely on the first valuation of CKS. They also rely on a second valuation made by CKS on 27 March 1985 in connection with this action. In this valuation, CKS purported to justify their former valuation by referring to tenders made in the 10th URA Sale of Sites (residential) which closed on 1 July 1981, the results of which were announced in December 1981. By making various calculations, conversions and adjustments of the residential/commercial mix in the property, CKS were able to show that the land value for each sq ft of saleable area in the property was $48.42 psf whereas those for three URA sites ranged from $21.03 to $38.55.

I accept the submission of counsel for the respondent that these two valuation reports are of no value for the purpose of demonstrating that the market value of the property was $7,084,000. The proper basis to value the property was 'the willing seller and willing buyer' basis. The substantive valuation, which was the first, was made on 'a willing seller-prudent buyer' basis based on the experience of a valuer who was not called by the appellants to explain his valuation. It was rather odd that even though the valuation was obtained by GE, the vendors, the basis of the valuation was oriented to the needs of the appellants. It was odder still that the actual consideration was below this valuation.

The second valuation is not much better. Its purpose was to provide the justification for the first valuation. The URA sales were used to calculate the comparable values of the residential space in each of these developments. If the URA sales are true comparables, they contradict the statement in the first valuation that there were no recent comparable sales. I find that in fact, the URA sales were not true comparables at all for the reasons given by the Chief Valuer in his report.

They were zoned for residential purposes and were developed for a different category of purchasers. Further, I accept the submission that the method used to find the value of the residential space in the property is too unrealiable by reason of the substantial adjustments. In any case, since the first valuation was given on a basis which is not relevant to the market value of the property, the justification provided by the second valuation does not carry the appellants any further.

The appellants also produced a third valuation made on 15 May 1987 by PW1 (who had recently joined CKS). It was called 'supplementary valuation report' and its purposes were expressly stated as follows:

1 To review our valuation report dated 29 October 1981. We had valued the abovenamed property on a willing seller-willing buyer basis ... at $7,084,000.
2a To provide more information on the sales evidence ...
b To provide additional sales evidence.
3 To comment on the Chief Valuer's report ...

This supplementary report suffers from one fundamental defect, as pointed out by counsel for the respondent. The defect is that it purported to change the basis of the valuation of 29 October 1981 to one of willing seller-willing buyer. If it did not change the basis, then PW1 had failed to make a distinction between the two bases. On either ground, the supplementary report is suspect as having been prepared to rationalize the valuation given by CKS, whatever its true basis was.

Moreover, this report is based on a method of valuation which has never been accepted by valuers as a correct method. What PW1 sought to do was to take the development cost of the property and the sales revenue up to 1987 and arrived at a calculation which showed, at the Chief Valuer's valuation, the appellants would have suffered a loss. I agree with the Chief Valuer that this was an irrelevant factor for the purpose of valuation.

This report also used an alternative method of valuation, which was to convert all the commercial units in the property under development into residential units, using three different hypothetical rates of conversion, ie the value of the commercial units would be 1.5, 2 and 2.5 times that of the residential units. Using this method PW1 was able to demonstrate that the Chief Valuer's valuation would give, respectively, the following values for each square foot of the saleable residential land: $146.76, $130.94 and $118.80. In comparison, it was pointed out that in the 10th URA sales, the actual prices ranged from $21.03 to $76.60 per square foot, whereas the value per square foot of the property would be $67.14, $59.90 and $54.08 respectively. The weakness of this method of valuation is that there is no way to show the correctness of any particular rate of conversion. In fact, the sales evidence set out in CKS's second report shows that the commercial units were sold, on the average, at 3.11 times that of the residential units. Accordingly, all that can be said about this method of valuation is that, although it may assist in showing that the Chief Valuer's valuation *may* be too high, it does not assist the appellants' own case.

The third report also refers to sales evidence of four properties as follows:

1 No 114 Neil Road, a four-storey building with a land area of 1,478 sq ft and a built-up area of 2,892 sq ft, situated opposite the property. It had a freehold title and zoned as local shopping. There was a transaction on 23 June 1981 at $500,000 ($172.89 psf of built-up space).
2 No 267 Cantonment Road, a three-storey building with a commercial zoning with a land area of 7,956 sq ft and a built-up area of 22,737 sq ft. It had a freehold title and was sold for $6.1m on 22 October 1980.
3 Petrol station site at River Valley/Nathan Road, with a freehold title, an area of 20,787 sq ft and zoned for local shopping. It was sold for $3,325,920 ($160 psf) on 12 April 1981. A four-storey shopping/residential building called Crystal Court with a basement carpark was erected on the site with a built-up area of 12,854 sq ft for showroom/shop and 24,251 sq ft of residential space (16 apartments).
4 No 19 Keppel Road, formerly the Sin Chew Jit Poh Building, with a freehold title, a commercial zoning, a land area of 24,615 sq ft and a building area of 128,987 sq ft and a net area of 84,625 sq ft. It was sold on 3 July 1979 at $9.5m ($112.26 psf of net area).

The object of the appellants' valuers in analysing the sales evidence of the above properties was to show that, in comparison, the Chief Valuer's valuation of $371.61 psf of vacant land was much too high. Using an imputed building value of $80 psf for No 114 Neil Road, PW1 was able to arrive at $181.76 psf of land space. Using an imputed building value of $180 psf for No 267 Cantonment Road, the land value was $252.31 psf, with a plot ratio of 3, but at $84.10 psf with a plot ratio of 1. However, No 19 Keppel Road could not be subject to a similar analysis, which in my view, only shows that there was either something wrong with the method of analysis or that the said property was not even a comparable to the other two properties. As Crystal Court is admitted by counsel for the respondent as being the closest to a true comparable, I shall consider its applicability later.

In so far as the aforesaid three properties are concerned, I agree with the Chief Valuer that they cannot be relied upon to show the value of the property for the many reasons given by him, eg the imputed values to the buildings were *arbitrary* (and any adjustment in any direction would drastically affect the calculation on the

value of the land); they were all improved properties and not vacant land which was ripe for development, like the property; they were commercially zoned and quite far away from the property; there were other commercial properties within the same area which were sold at much higher prices and therefore No 267 Cantonment Road was not a representative property; No 19 Keppel Road was also sold too long ago to provide a suitable comparison; for the above reasons, the Property Price Index should not be used simply to calculate the probable value of one single property; No 114 Neil Road was 28 times smaller than the property and could not be developed to its full plot ratio or zoning.

Crystal Court shares many similarities with the property. It was sold as vacant land with a freehold title and development potential for local shopping. It was sold about seven months before the property was sold. However, it was subject to micro-zoning under the Master Plan in that only a four-storey building would be approved, and in consequence any unit therein could not be purchased by non-citizens without approval from the competent authority. It had a maximum density of 495 persons per hectare compared with the approved density of 615 for the property. Further, Crystal Court, unlike the property, is located in a predominantly residential area and farther away from a major shopping area. I also agree with the Chief Valuer's evidence that because of the above characteristics, Crystal Court could only support ground floor shopping. In fact, it has been developed to cater for ground floor shopping only, and is occupied as a single shop although there is a mezzanine/second floor. For this reason, the value of the shopping component of this property would be low compared with the local shopping areas in Selegie Road or Bencoolen Street.

Counsel for the respondent contends that this property should be rejected as a comparable because of these differences. I agree.

I turn now to the valuation given by the Chief Assessor. He has used as comparables, three properties which were all zoned for local shopping. The Chief Valuer's analysis of the sales evidence, in comparison with that of the property, is set out in the Appendix to this judgment.

The method used by the Chief Valuer was to value the two components in local shopping: the commercial component in terms of its plot ratio and the residential components in terms of its density. As the percentages of permitted residential use, densities and plot ratios differed in respect of the three properties, it was necessary to adjust them, for the purpose of comparison, to obtain a net overall density and a net overall plot ratio. Having obtained these figures, the Chief Valuer then imputed a value to the residential component area in each comparable from sales evidence in the vicinity. The value of the commercial component was then derived from the difference of the transacted rates and the imputed values of the residential components. On this method, the Chief Valuer arrived at the total figure of \$4,440 psm × 3,871.2 sq m = \$15,484,800 for the property.

In support of his imputed values for the residential components, the Chief Valuer relied on the sales evidence of five pieces of residential properties at (1) Addis Road (transacted on 29 March 1982) at \$1,056 psm, (2) Devonshire Road (on 18 November 1980) at \$2,045 psm, (3) 31/34 Jervois Road (29 January 1981) at \$1,076 psm, (4) Spottiswoode Park Road (21 December 1982) at \$1,432 psm and (5) Sarkies Road (18 November 1981) at \$1,212 psm. On this evidence, the Chief Valuer imputed the residential value for the residential component of Selegie Road/Mackenzie Road at \$1,000 psm, of Eber Road/Killiney Road at \$1,400 psm, and of Bencoolen Road at \$1,800 psm. From these figures were derived the respective values for the commercial components by substracting them from the overall rates (ie price per square metres). However, in order to compute the overall rate of the property, it would be necessary to impute values for both their residential and the commercial components (since the actual transacted value could not be used). These were imputed as \$1,500 and \$2,500 thus giving an overall rate of \$4,000. The Chief Valuer has in his valuation report stated that he had arrived at the overall rate of \$4,000 psm after adjusting for the factors of particular density, plot ratio, location size, time of transactions, etc.

Counsel for the appellants has criticized the method used by the Chief Valuer as requiring too many adjustments, and it is common ground that the more adjustments that are required the less accurate the valuation would be. In my view, the method used by the Chief Valuer require fewer adjustments than the more or less similar method used by CKS in which the adjustments were made to reflect a valuation which was originally given on the basis of experience alone. However, it does not follow from this that the Chief Valuer's valuation is correct for the purpose of this appeal as reflecting the true market value of the property. The fact remains that the two essential imputed values making up the valuation of \$4,000 psm are also, in my view, subjective and therefore to that extent arbitrary although not capricious.

My understanding of the Chief Valuer's analysis is that it uses the density of the residential component of the Selegie/Mackenzie land as the starting point. He used the value of \$1,000 psm for a Master Plan density of 370 per hectare (with an assumed permitted density of 60%). The value of \$1,000 psm is derived from the sale the Addis Road land at \$1,056 psm for the same

density of 370 per hectare. According to the Chief Valuer, the usual permitted density is 60%. However, it has not been explained why the Addis Road property is a correct benchmark to value the Selegie/Mackenzie property. My own view is that in terms of residential use, the Addis Road property is superior to the other property which is adjacent to the main road, and therefore noisy and dusty.

The Devonshire Road property was also, in my view, inappropriate as a measuring yard because it is situated on a hill just off the mid-section of Orchard Road and was therefore expected to fetch a much higher price. Similarly, the Jervois Road property is much superior to the property as residential land, being situated in a wooded area of River Valley Road. The Spottiswoode Park land is also situated in a wooded area. It was sold on 12 December 1982 when the property market as a whole had been going down since the first quarter of 1981. Also the Master Plan density was 494 per hectare. The Sarkies Road land was also much more superior to the property and this is reflected in the price of $1,212 psm although the density was only 185 per hectare.

The first question then is whether the imputed value of $1,500 psm for the residential component of the property was reasonably accurate. The Chief Valuer has not explained how he arrived at this value except by comparison with the imputed values for the three comparables and the sales evidence of the residential properties, particularly the Addis Road property. In my view, if the Addis Road property was worth $1,000 psm, then the Selegie Road/Mackenzie Road land should be valued at a lower figure because it was inferior for residential use. I would impute a value of $800 psm, and adopting the Chief Valuer's adjustments, the imputed value of the residential component of the property should be $1,200 psm.

What about the imputed value of $2,500 psm by reference to the plot ratio of the property? Again, there is no detailed explanation on how this value was arrived at, that is, what the actual adjustments were for location, density, etc. In my view, the three comparables, in their own way, were much superior to the property in terms of shopping use. The Selegie Road/Mackenzie Road property is right in the heart of the local shopping area in that part of Singapore. So was the Bencoolen Road property. The Eber Road/Mackenzie Road property is just off the mid-section of Ochard Road. In contrast, the property was isolated in an area of mainly two-storey residential houses. Although counsel for the respondent has submitted that it is at the fringe of the general shopping area of Chinatown along New Bridge Road, my view as a layman is simply that, because the property is at the fringe and not within the general shopping area, its potential as a shopping area would be adversely affected. I think that the common experience is that crowds draw crowds in large shopping areas.

For the above reasons, I think that the imputed value of $2,500 psm for the shopping component of the property was too high. I would value it at $2,000 psm.

Accordingly, on the evidence, I find that the market value of the property was about ($1,200 + $2,000) psm × 3,871.20 sq m = $12,387,840. The stamp duty chargeable on the conveyance was therefore $371,237. As the appellants have paid stamp duty on the valuation of the Chief Valuer, there will be an order for the excess to be refunded to the appellants. As both parties have failed in justifying their respective valuations, they will pay their own costs of the appeal.

Order accordingly.

Appendix

Analysis of the Sales Evidence

Data	Property 1	Property 2	Property 3	Appellants' Property
Location	Selegie Rd/ Mackenzie Rd	Eber/Killiney/ Penang Rd	Bencoolen Street	Neil Rd/ Craig Road
Land Area	1,214.7m²	1,491.7m²	1,501.9m²	3,871.9m²
Contract Date	1.10.80	23.8.80	21.8.81	25.11.81
Amount	$5,800,000	$6,637,000	$7,759.680	
Rate	$4,775/m²	$4,449/m²	$5,167/m²	
Density × percentage of site	370 × 60% = 222 p/ha	495 × 60% = 297 p/ha	990 × 60% = 594 p/ha	615 × 72% = 443 p/ha
Plot Ratio × percentage of site	3.8 × 40% = 1.52	3 × 40% = 1.2	3 × 40% = 1.2	3 × 28% = 0.84
Date of In-principle approval	29.7.80	29.9.80	21.1.83 from LS to hotel zone	10.3.80
Date of formal approval	30.6.81	25.3.81		9.7.81 24.7.82 Amend
Analysis				
Density (Estimated)	$1,000	$1,400	$1,800	$1,500*
Plot Ratio (difference)	$3,775	$3,049	$3,367	$2,500*
Overall Rate	$4,775	$4,449	$5,167	$4,000*

*Estimated value

Solicitors: *Foo & Quek.*

Reported by *S Surenthiraraj*